

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF DELAWARE**

Mohammed Mostafa,)	
)	
Plaintiff)	
v.)	COMPLAINT FOR MANDAMUS UNDER 28 U.S.C. §1361
PAUL NOVAK, DIRECTOR)	
U.S. Department of Homeland Security)	NO. A 43 403 798
U.S. Citizenship and Immigration Service, Vermont Service Center, in his official capacity, as well as his successors and assigns,)	
)	
and)	
)	
EMILIO GONZÁLEZ,)	
Director of U.S. Citizenship & Immigration Services, in his official capacity, as well as his successors and assigns)	
)	
and)	
)	
ROBERT S. MUELLER, III)	
Director of the Federal Bureau of Investigation, in his official capacity, as well as his successors and assigns)	
)	
and)	
)	
Mr. Colm F. Connolly, Esq.)	
U.S. Attorney, District of Delaware, in his official capacity, as well as his successors and assigns)	
)	
Defendants.)	

I. INTRODUCTION

1. This is a civil action brought to compel Defendants and those acting under the Defendants' direction to adjudicate the application for adjustment of status filed

pursuant to §245 of the Immigration and Nationality Act, 8 U.S.C. §1255, by Plaintiff on December 9 1999.

II. JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1361 and §1331. This action is filed in response to unreasonable agency delay and failure to act on Plaintiff's application for adjustment of status in violation of the Administrative Procedures Act ("APA") under 5 U.S.C.A. §702, as well as the failure to perform the mandatory duty to adjudicate the application. Venue is properly with this Court because Plaintiff resides in the State of Delaware.

3. The Plaintiff, Mohammed Mostafa, is an adult individual who is a national of Bangladesh and resides lawfully in the United States at 2708 Doris Dr. Wilmington, DE 19803.

4. Paul Novak is the District Director of the Vermont Service Center of the U.S. Citizenship and Immigration Service (USCIS). Plaintiff has filed his application for adjustment of status with that office and the office retains jurisdiction over the application. The USCIS, through the Vermont Service Center, has a mandatory duty to act on the application for adjustment of status within a reasonable period of time.

5. Emilio Gonzalez is the Director of the U.S. Citizenship and Immigration Services (USCIS) who is also sued only his official capacity, as well as his successors and assigns. The USCIS is headquartered at 20 Massachusetts Avenue, N.W., Washington, DC 20529. The USCIS is assigned the adjudication of immigrant visa .

6. Robert S. Mueller, III is Director of the Federal Bureau of Investigation (FBI) who is also sued in his official capacity as well as his successor and

assigns. The FBI is headquartered 935 Pennsylvania Ave Washington, D.C. 20535. The FBI conducts background checks for the USCIS.

III. BACKGROUND

7. Plaintiff is eligible for Naturalization because he successfully applied and passed the examination required for Naturalization on May 8, 2003. Plaintiff was entitled to apply for Naturalization because he had been a U.S. Permanent Resident for five years prior to applying.

8. Plaintiff has made more than a dozen inquiries to United States Citizenship and Immigration Services in attempts to resolve his pending case. The government has responded by informing Plaintiff simply that his background checks have not been completed. Most recently (June 21, 2007) USCIS provided a report indicating that Plaintiff's case was pending background checks

9. The Plaintiff has complied with all requests made by the USCIS to complete all necessary biometrics appointments. He has provided all of the information requested by the agency and has applied with all of the appointment notices.

10. It is the stated goal of the USCIS to complete all adjudication within six months of filing of the application. Further, the current listed processing time for the Vermont Service Center for applications of this type is approximately 11 months.

IV. STATUTORY AND REGULATORY FRAMEWORK

11. The APA provides a remedy to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §706(1).

12. Mandamus is a remedy available for extreme agency delay where the agency has not performed a mandatory action. 28 U.S.C. §1361.

V. CLAIM FOR RELIEF

13. Defendants have unreasonably delayed and failed to perform a mandatory action in adjudicating the application for Naturalization filed and approved four years ago thereby depriving Plaintiff of his lawful request to become a United States Citizen. INA Sec 336 (b), 8 USC Sec. 1447(b) requires USCIS to act within 120 days after a naturalization examination is conducted under part 335 or the applicant may apply to the U.S. District Court where the applicant resides 8 CVFR Secs. 310.5, 336.9;Nagahi v. INS, 219 F.3d 1166 (10th Cir. 2000);
14. Defendants owe Plaintiff the duty to act upon his application for naturalization and have unreasonably failed to perform that duty.
15. Plaintiff has exhausted any administrative remedies that may exist. No other remedy exists for Plaintiff to resolve Defendants’ delay.

WHEREFORE, Plaintiff prays that the Court:

- (1) Compel Defendants and those acting under them to perform their duty to adjudicate the application for adjustment of status owed to Plaintiff;
- (2) Grant such other and further relief as this Court deems proper under the circumstances; and
- (3) Grant attorney’s fees and costs of court.

/s/ Kevin Grubb

Kevin Grubb, Esquire
Attorney I.D. No.
Hogan & Vandenberg LLC
4 East 8th Street, #302
Wilmington, DE 19801
(302) 345-9383

Date: September 11, 2007

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF DELAWARE**

Mohammed Mustafa,)
)
Plaintiff)
v.)
)
PAUL NOVAK, DIRECTOR)
U.S. Department of Homeland Security)
U.S. Citizenship and Immigration)
Service, Vermont Service Center,)
in his official capacity,)
as well as his successors and assigns,)
)
and)
)
EMILIO GONZÁLEZ,)
Director of U.S. Citizenship &)
Immigration Services, in his)
official capacity, as well as his)
successors and assigns)
)
and)
)
ROBERT S. MUELLER, III)
Director of the Federal Bureau)
of Investigation, in his)
official capacity, as well as his)
successors and assigns)
)
and)
)
Mr. Colm F. Connolly, Esq.)
U.S. Attorney, District of Delaware,)
in his official capacity, as well as his)
successors and assigns)
)
)
Defendants.)

Index of Evidence Documents

The Plaintiff, by and through undersigned counsel, offers the following documents into evidence in the above-referenced proceedings:

1. June 21, 2007 Response from USCIS
2. Naturalization Interview Results
3. Letter to Sen. Tom Carper from Ms. Jill Shute on behalf Plaintiff
4. Response from Senator Carper
5. Identification (Delaware Driver's License and Permanent Resident Card)

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I HAVE SERVED:

**PAUL NOVAK, DIRECTOR
U.S. Department of Homeland Security
U.S. Citizenship and Immigration
Vermont Service Center
75 Lower Weldon Street
St. Albans VT**

**EMILIO GONZÁLEZ,
Director of U.S. Citizenship &
Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Ave
Washington, D.C. 20529**

**ROBERT S. MUELLER, III
Director of the Federal Bureau
of Investigation
J. Edgar Hoover Building
935 Pennsylvania Ave NW
Washington, D.C. 20535-0001**

**Mr. Colm F. Connolly, Esq.
U.S. Attorney, District of Delaware
The Nemours Building
1007 Orange Street #700
Wilmington DE 19801**

in the foregoing matter with a copy of this Complaint for Mandamus by depositing in the United States mail a copy of same in a properly address envelope with adequate postage thereon, in the manner prescribed by Rule 5 of the Federal Rules of Procedure.

This 11th day of September 2007

____/s/ Kevin Grubb _____
Kevin Grubb, Esquire
Attorney I.D. No. DE 4409
Hogan & Vandenberg LLC
4 East 8th Street, #302
Wilmington, DE 19801
Attorney for Plaintiffs

(302) 225 2734



**U.S. Citizenship
and Immigration
Services**

Name:

Hogan & Vandenberg LLC

Rick Hogan

4 East 8th St. STE 302

Wilmington, DE 19801

USCIS
Philadelphia District Office
1600 Callowhill St
Philadelphia PA 19130

Date: 6-21-07

RE: A #: 043403798

RE: Mohammed Mostafa

- Your case is pending and you will receive written notification of further activity as your case progresses through the naturalization process.
- Your case will be completed in the chronological order of cases similar to yours. You will be notified by mail, of any action taken on your case.
- Your request for emergent processing is granted. You will be advised of the decision or the date of your interview within ten days from the date of this letter.
- At your request, your new address has been updated, and your file has been forwarded to the USCIS office at _____ . Please direct any future inquiries or correspondence to that office.
- We have requested your file from the USCIS Office at _____ . Most file transfers are completed within 90 days. Written notification will be sent to you within 60 days after your file arrives at this office.
- Your request for another interview or oath ceremony date is granted. You will receive notice by mail as soon as the scheduling takes place.
- It has been determined that you need to be scheduled for fingerprinting or further interview. You will receive written notification within 60 days from the date of this letter.
- Your case is pending final background checks, which are processed outside of this office. These final checks can delay your case for an undetermined amount of time. Written notification will be sent to you within 30 days after all processing is complete.
- Other _____

We are committed to significantly improving customer service by eliminating the backlogs of all our pending cases and decreasing the processing times. Thank you for your patience.

Sincerely,

Donald J. Monica
District Director

U.S. Department of Justice
Immigration and Naturalization Service

Naturalization Interview Results

A#: A 043 403 798

Norman McCall

On 14: 8, you were interviewed by INS officer _____.

- You passed the tests of English and U.S. history and government.
- You passed the test of U.S. history and government and the English language requirement was waived.
- The Service has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- You will be given another opportunity to be tested on your ability to _____ speak / _____ read / _____ write English.
- You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- Please follow the instructions on the Form N-14.
- INS will send you a written decision about your application.
- You did not pass the second and final test of your _____ English ability / _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. INS will send you a written decision about your application.

A) _____ **Congratulations! Your application has been recommended for approval.** At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) _____ **A decision cannot yet be made about your application.**

It is very important that you:

- ✓ Notify INS if you change your address.
- ✓ Come to any scheduled interview.
- ✓ Submit all requested documents.
- ✓ Send any questions about this application in writing to the officer named above. Include your full name, A-number, and a copy of this paper.
- ✓ Go to any oath ceremony that you are scheduled to attend.
- ✓ Notify INS as soon as possible in writing if you cannot come to any scheduled interview or oath ceremony. Include a copy of this paper and a copy of the scheduling notice.

Jill Shute
2117 Largo Road
Wilmington, DE 19803

June 8, 2005

Dear Senator Carper,

I write to you as a fellow advocate for those who find it difficult to advocate for themselves. As the founder of AMID, I usually wear my NAMI-DE hat and advocate for the needs of Delawareans who suffer with a serious mental illness: to which you have been most responsive. However, today I want to bring before you a family dealing with a distinctly different issue.

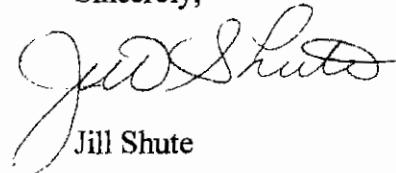
As you know, I teach math at Springer Middle School and for the last three years I have had the pleasure of working with a member of our custodial staff by the name of Armuda Mostafa. She has recently become a citizen of this great land of ours, and is disturbed that her husband's citizenship approval is being delayed even though he passed the test (on the first try) long before she did. The Immigration Office has not given him a reason for the delay. The Mostafas are eager to bring their teenage children, who are still in Bangladesh, to America. Upon my recommendation, her husband, Mohammed Mostafa, called your office and was told to fax his paperwork, which he did on June 2, 2005. Mr. Mostafa has worked for the Brandywine School District for eight years and he and his wife now own a home in the district. His green card expires in September and his wife is concerned that his lack of citizenship may become a problem. I have attached a copy of his paperwork.

Your office has a longstanding history of helping the oppressed and unheard. Although I am confident that your office staff will handle this situation with expediency, I thought a little personal history on the validity of this family and their pressing concern might help. They have been separated from their children for eight years: a high price to pay for giving your children a chance to become Americans.

I hope this finds you and your family well. Our boys are about the same age as yours, so I know you are fully aware that time flies by much too quickly! May the peace of our Lord rest upon you and your family today and always.

I put an inspirational quote on my board every day at Springer. I frequently use your mother's rule for happiness: "Serve Others". It's powerful. Thanks for serving us all so well. We are blessed to have you represent us in the Senate.

Sincerely,


Jill Shute

THOMAS R. CARPER
DELAWARE

United States Senate

WASHINGTON, DC 20510-0803

September 30, 2004

Mr. Mohammed Mostafa
227 South Harrison Street
Wilmington, Delaware 19805

Dear Mr. Mostafa:

Thank you for contacting me to request the status of a petition submitted to the U.S. Citizenship and Immigration Services (CIS).

I have asked Ms. Marjorie Biles, a member of my staff, to contact the CIS on your behalf. The CIS informed Ms. Biles that your case is pending security clearance and that you would receive written fingerprint notification within the next two weeks. I hope you find this information helpful.

Please feel do not hesitate to contact me regarding future federal issues of interest to you. Again, thank you.

Sincerely,



Thomas R. Carper
United States Senator

07-545

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Mohammed Mostafa

(b) County of Residence of First Listed Plaintiff New Castle DE
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number)
Hogan & Jandberg LLC

DEFENDANTS

Paul Nouak, et al.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|-----------------------------------------------------------------|---------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Citizen of Another State	PTF	DEF
<input checked="" type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/>	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other		<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DWIC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input checked="" type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

(Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 USC § 1331</u>					
	Brief description of cause: <u>Man O' War</u>					

VII. REQUESTED IN COMPLAINT: IF ANY	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No		
----------------------------------------	-------------------------------------------------------------------------------	-----------	-------------------------------------------------------------------------------------------------------------------	--	--

DATE	SIGNATURE OF ATTORNEY OF RECORD				
	<u>Kevin M. Grif</u>				

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. - 07-545 -

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 4 COPIES OF AO FORM 85.

9/11/07

(Date forms issued)

R. Hogan
(Signature of Party or their Representative)

Rick Hogan

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action